

(d) Is subject to supervision or examination by an official of the United States Government or of a State; and

(e) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000.

**§ 221.31 Approval of corporate noncitizen trustee.**

(a) No corporate Noncitizen may serve as a trustee unless it shall first have filed with the Vessel Transfer Officer an application pursuant to § 221.33(a) of this part and received approval therefor pursuant to § 221.33(b). A corporate noncitizen trustee will be approved under 46 U.S.C. 31328 (a)(4) and (b) if it—

(1) Is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(2) Is authorized under those laws to exercise corporate trust powers;

(3) Is subject to supervision or examination by an official of the United States Government or of a State;

(4) Has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000; and

(5) Is not a Person who is subject, directly or indirectly, to control of any country identified in § 221.13(a)(4) of this part.

(b) Any approval granted pursuant to paragraph (a) of this section shall terminate if the approved institution shall fail at any time to meet the requirements of that paragraph.

**§ 221.33 Application for approval as trustee.**

(a) Each applicant for approval as a trustee shall submit a completed Maritime Administration Form MA-579 to the Vessel Transfer Officer.

(b) Each approval of an application to be an approved trustee shall be in writing and an original of such approval shall be provided by the Maritime Administrator to the approved trustee.

(c) Each approval of a trustee shall be effective for a period of five (5) years from the date of issuance, subject to renewal for additional five (5) year periods upon satisfaction of the provisions of § 221.35.

(d) A list of approved trustees will be published from time to time in the FEDERAL REGISTER, but current information as to the status of a particular Person may be obtained from the Vessel Transfer Officer.

(e) Entities approved as trustees under the provisions of §§ 221.29 and 221.31 of this part may act as a trustee without specific transactional approval of the Maritime Administrator.

**§ 221.35 Renewal of approval of trustee.**

(a) Upon the filing of an acceptable Maritime Administration Form MA-580, approval of a trustee continuing to meet the requirements of this subpart will be extended for an additional period of five (5) years.

(b) The form shall be submitted to the Vessel Transfer Officer not later than the last business day of, and not earlier than the thirtieth (30th) calendar day before expiration of, the five (5) year period then in effect.

**§ 221.37 Conditions attaching to approvals.**

Every approval granted by the Maritime Administrator pursuant to 46 U.S.C. 31322(a)(1)(D) (iii) or (vi) or 31328(a) (3) or (4) and this part shall be subject to the following conditions whether or not incorporated into a document evidencing such approval:

(a) An approved Mortgagee or trustee shall promptly respond to such written requests as the Maritime Administrator may make from time to time for information or reports concerning its continuing compliance with the terms or conditions upon which such approval was granted;

(b) An approved Mortgagee or trustee shall promptly notify the Maritime Administrator after a responsible official of such Mortgagee or trustee obtains knowledge of a foreclosure proceeding in a foreign jurisdiction involving a Documented Vessel on which such approved Mortgagee or trustee holds a mortgage under or pursuant to its approval under §§ 221.23, 221.25, 221.29, or 221.31 of this part and to which 46 App. U.S.C. 808(c) and section 221.11 of this part are applicable. Such Mortgagee or trustee shall ensure that the court or other tribunal has proper notice of

those provisions, including the requirement that the vessel remain documented under the laws of the United States following any such sale; and

(c) An approved trustee shall not assume any fiduciary obligation in favor of Noncitizen beneficiaries that is in conflict with any of the restrictions or requirements of this part 221.

**Subpart D—Transactions Involving Maritime Interests in Time of War or National Emergency Under 46 App. U.S.C. 835 [Reserved]**

**Subpart E—Civil Penalties**

**§ 221.61 Purpose.**

This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309 and 31330, and section 9(d) of the Shipping Act, 1916, as amended (46 App. U.S.C. 808(d), pursuant to 49 U.S.C. 336.

NOTE: Pursuant to 46 U.S.C. 31309, a general penalty of not more than \$11,000 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a person violating 46 U.S.C. 31328 or 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than \$27,500 for each violation. A person that charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 App. U.S.C. 808 is liable for a civil penalty of not more than \$11,000 for each violation. These penalty amounts are in accordance with Public Law 101-410, as amended by Public Law 104-134. Criminal penalties may also apply to violations of these statutes.

[61 FR 56901, Nov. 5, 1996]

**§ 221.63 Investigation.**

(a) When the Vessel Transfer Office obtains information that a Person may have violated a statute or regulation for which a civil penalty may be assessed under this subpart, that Officer may investigate the matter and decide whether there is sufficient evidence to establish a *prima facie* case that a violation occurred.

(b) If that Officer decides there is a *prima facie* case, then that Officer may

enter into a stipulation with the Party in accordance with § 221.67 of this subpart, or may refer the matter directly to a Hearing Officer for procedures in accordance with § 221.73 to 221.89 of this subpart.

**§ 221.65 Criteria for determining penalty.**

In determining any penalties assessed, the Vessel Transfer Officer under § 221.67 and the Hearing Officer under §§ 221.73 to 221.89 of this part shall take into account the nature, circumstances, extent and gravity of the violation committed and, with respect to the Party, the degree of culpability, any history of prior offenses, ability to pay and other matters that justice requires.

**§ 221.67 Stipulation procedure.**

(a) When the Vessel Transfer Office decides to proceed under this section, that Office shall notify the Party in writing by registered or certified mail—

(1) Of the alleged violation and the applicable statute and regulations;

(2) Of the maximum penalty that may be assessed for each violation;

(3) Of a summary of the evidence supporting the violation;

(4) Of the penalty that the Vessel Transfer Officer will accept in settlement of the violation;

(5) Of the right to examine all the material in the case file and have a copy of all written documents provided upon request;

(6) That by accepting the penalty, the Party waives the right to have the matter considered by a Hearing Officer in accordance with §§ 221.73 to 221.89 of this subpart, and that if the Party elects to have the matter considered by a Hearing Officer, the Hearing Officer may assess a penalty less than, equal to, or greater than that stipulated in settlement if the Hearing Officer finds that a violation occurred; and

(7) That a violation will be kept on record and may be used by the Maritime Administration in aggravation of an assessment of a penalty for a subsequent violation by that Party.

(b) Upon receipt of the notification specified in paragraph (a) of this section, a Party may within 30 days—